

East Longmeadow Zoning Board of Appeals

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Present were: Chair, Mark Beglane; Vice Chair, John Garwacki; Clerk, Charles Gray, Alfred Geoffrion and Frances Dean.

Public Hearing – Pasquale Liquori, 600 North Main Street

Chair, Mark Beglane opened the public hearing for Pasquale Liquori, Patsy's Restaurant, 600 North Main Street. Clerk, Charles Gray read the legal notice and correspondence into the record as follows:

Gloria Hogan, 42 Braeburn Road wrote that she had no objections to Pasquale's request to build a deck.

Sergeant Richard Bates, Safety Officer reviewed the location and there is not a visibility issue there. Additionally Dorset Street lines are up with their parking lot and not the deck. A review of accident reports from January 1, 2005 to date indicates only one minor accident at the intersection. I do feel there should be some sort of low barrier between the roadway and the deck if possible.

Dan Hellyer, Building Commissioner said that the deck is part of a means of egress and does require an exit to ground level. The exit off the deck has to be a ramp to accommodate handicapped customers.

Representative Attorney Brian Fitzgerald for Pasquale Liquori, owner of 600 North Main Street asked if a low barrier roadway was what Sergeant Bates was referring to. Mr. Beglane said that he thinks Sergeant Bates wants a blockade between the barriers so that if a car goes off the road it doesn't go directly into the deck. Attorney Fitzgerald said that the Building Inspector indicated that he was requiring an exit off of the deck. Mr. Beglane said that it would have to be handicapped accessible if it's granted. Attorney Fitzgerald said that they have submitted an application for a variance and a plan drawn up by Smith Associates. He said that the Board should note that the building contains a finished area about 4,186 square feet and there are essentially two units in the building. Attorney Fitzgerald said one is that there is a single family residence on the second floor of the building and on the first floor is Patsy's restaurant which is owned by Patsy's Pizzeria & Restaurant, Inc. and operated by Pasquale Liquori. He said that the restaurant is 2,339 square feet and in 1992 the Planning Board

issued a Special Permit for the operation of the restaurant. He said prior to that it was a hobby shop and prior to that it was some type of an antique shop. He said in 1993 the Zoning Board granted a variance for the erection of a sign and at that time the Board found that the building was a non-conforming building so they believe it's a pre-existing, non-conforming building. Attorney Fitzgerald said in 1993 when Mr. Liquori was issued a Special Permit for the restaurant the plan that was submitted showed an outdoor patio and that outdoor patio was built as it's shown in a prior picture they were able to obtain and has submitted it with the application. He said that it also shows in terms of the view from Braeburn Road that there was a fence with a gate so you would exit from restaurant and walk down to the patio. Attorney Fitzgerald said in May of 2012 Mr. Liquori decided to demolish and remove the current patio and build a deck. He said that Mr. Liquori was under the belief that he did not require a building permit in order to do that because of the Special Permit that he had received from the town. Attorney Fitzgerald said that the deck would be constructed smaller and wouldn't be as close to the street which was constructed. In October he was notified by the Planning Board that they found that the structure was not in compliance with the Special Permit. He said that they went before the Planning Board in October and their instructions to Mr. Liquori were to go before the Zoning Board of Appeals in order to request a variance from the setback requirement. Attorney Fitzgerald said that particular lot has frontage on both North Main Street and as well as Braeburn Road. He said the building itself has frontage on both streets and in looking at the plan it shows that 20 feet is one inch so it appears that the building is approximately about 5 feet from the boundary line on Braeburn Road. He said that it's basically non-conforming with the zoning ordinance with respect to frontage on Braeburn Road.

Attorney Fitzgerald said on North Main Street with respect to its frontage the deck as it's built is approximately 19.5 feet from the boundary line on North Main Street and that would leave a difference of 5.5 feet because the zoning ordinance requires a frontage setback of 25 feet under the Business zone. He said to note the business itself is a mixed use property because it has residence on the second floor and being a restaurant the zoning requires with a business zone that there is no side yard setback but if it's being used for residential purposes the side yard setback would be 12 feet. Attorney Fitzgerald said that he submitted a memorandum to the Board to set forth the grounds that they feel the building itself is a pre-existing, non-conforming structure and under the General Laws of Massachusetts, Chapter 40A, Section 6. They feel that it would be given a special exemption because it is a pre-existing, non-conforming structure. He said that they are before the Board to determine either a variance is not required because of the alteration because the deck would not be substantially more detrimental than the existing non-conforming use to the neighborhood. Attorney Fitzgerald said that he submitted three cases as well which govern that and read those cases into the record.

Mr. Beglane said unlike those cases unfortunately in East Longmeadow the Planning Board is the one who grants the special permits not the Zoning Board. He said if they were going to go for that they would have to go before the Planning Board because they grant the Special Permits, they are the permit granting authority for Special Permits. Mr. Beglane said that the Board could rule on the variance as to whether or not they

meet the requirements of a variance but they don't have the power to issue special permits under that section because they are not the permit granting authority in town.

Attorney Fitzgerald said with respect to the variance they are looking for a 5.5 foot variance based on the plan as submitted. He said under the requirements for a variance they feel with respect to that the building is a pre-existing, non-conforming structure as previously found by the Zoning Board back in 1992. Attorney Fitzgerald said with respect to a literal enforcement of the zoning ordinance would involve a substantial hardship or otherwise to the applicant because in order to comply with any of the frontage requirements or the side yard requirements the hardship would be that Mr. Liquori would have to either tear down the structure or move the structure back to be in compliance. He said that they feel that desirable relief can be granted by the Board of Appeals without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-laws. Attorney Fitzgerald said the building on the premises they feel is not substantially more detrimental than the existing the non-conforming structure to the neighborhood.

Mr. Beglane asked how far the left side of the deck is at Braeburn Road. Attorney Fitzgerald said it will be about 10 feet. Mr. Beglane said it also looks as though he would need a variance from Braeburn Road to North Main Street because it is a corner lot.

Mr. Geoffrion said that he understands what he saying but it is a pre-existing, non-conforming building. Mr. Beglane said that building itself is. Mr. Geoffrion said that includes the frontage on Braeburn Road but the Board's issue is the deck. Mr. Beglane said correct that was why he asked how far the deck is off of Braeburn Road because he may need a variance not only from North Main Street but also for Braeburn Road. Mr. Geoffrion asked if they have anything that shows the prior patio. Ms. Macdonald said that it was a cement slab that went before the Planning Board and no outside seating was approved.

Mr. Beglane said from what he understands from the history was that there a cement slab at some point and time there were brick posts built and the fences were erected between those posts. He said then tables and chairs were moved out but they did get their license approved by the Selectmen to allow outdoor service with alcohol on the patio. Mr. Beglane said that he believes the patio was larger than the deck that's there today which went way beyond the sign. He said from what he understands the Planning Board never formerly approved the exterior area as a dinning area it was just a flat outdoor concrete space at that time. Ms. Macdonald said that it was cement slab that was what was in the decision but no seating, no fence and no structures ever went before the Planning Board.

Mr. Geoffrion said if that slab was bigger than the current deck they are actually reducing the non-conformity. Mr. Beglane said that's an issue when the slab was put in, was it part of the original building and they have to have evidence that the slab was in prior to 1962. Ms. Macdonald said that it wasn't considered a structure because it's just a cement slab.

Mr. Beglane said that it received a Special Permit because the use was changed to a restaurant from a hobby shop. He said that it is a pre-existing, non-conforming building however the Board of Appeals doesn't have the ability to grant Special Permits the Planning Board is the granting authority. Mr. Beglane said if they grant a variance that will make it moot in terms of hardship and if they were going to vote on it he wanted to know what the distance was because it's roughly the amount of the variance they would have grant. He said if they are going to grant the variance they have grant it from both streets and the other thing he did notice the sign that was approved by the Board of Appeals isn't exactly the sign that got built, but that is not in front of the Board that evening. Mr. Beglane said if they are going to vote on the variance they have to come up with a number off of Braeburn for the size of it. He said that it looks to be a 10 foot variance from Braeburn Road and asked Attorney Fitzgerald if the front of the deck parallel to the street. Attorney Fitzgerald said that it could be based on the taking the Commonwealth did in 1927. Mr. Beglane said if the Board grants the variance he still may have to amend his Special Permit to allow him to use the deck and addressed the Board for any questions.

Mr. Garwacki asked if there was any opposition. Mr. Beglane said they don't have anything up to date and addressed the audience for any questions.

Richard Beron, 102 Braeburn Road said that as many times he goes up and down the street he has never has seen an issue going out from Braeburn Road onto North Main Street, either turning right or left, particularly right where the deck is now. He said before Patsy's put the deck on it was a much larger area and it is less than half the size and there absolutely no obstruction. Mr. Beron said in all of his years he has been there has never been the remote chance of an accident and attended the meeting to support Mr. Liquori to allow him to receive a variance.

Ralph Page asked if a ramp has to be added will that change where the variance will be depending on where it's located. Mr. Beglane said that ramps are exempt and could be in front yard.

Mr. Liquori said when he told the license commission that he built a deck they told him to make sure there are no exits from the deck. Mr. Beglane said that he said that probably for fire protection but the license commission is worried about alcohol getting off the deck. He said that he has to have some sort of way of getting off the deck in case of an emergency such as some sort of a gate.

With no further discussion and upon motion duly made by Alfred Geoffrion and seconded by John Garwacki, the Board voted (4-1) due to the location of the building, a substantial hardship has been shown to grant a 5.5+/- foot variance (North Main Street) to the Zoning By-law to allow a deck measuring 10.5' x 32.3' on the property located at 600 North Main Street, East Longmeadow, Massachusetts, which does not conform to the front setback requirements of the Zoning By-law, Number 3.2, Page 3-20 Dimensional and Density Regulations of the Business District. Upon motion duly made by Alfred Geoffrion and seconded by John Garwacki, the Board voted (4-1) to grant a 10 +/- foot variance (Braeburn Road) to allow said deck measuring 10.5' x 32.3' on the property located at 600 North Main Street, East Longmeadow, Massachusetts, which

does not conform to the front setback requirements of the Zoning By-law, Number 3.2, Page 3-20 Dimensional and Density Regulations of the Business District. The required front-yard setback in the Business District is 25 feet. These variances granted are conditioned on that the applicant build, and have inspected by the Building Commissioner, a handicapped ramp from the deck to the ground level in accordance with M.G.L. Chapter 6, §185 (American Disabilities Act) and a Special Permit obtained from the Planning Board in order to use the deck with seating.

There being no further business the meeting was adjourned at 7:00 p.m.

For the Board

Charles Gray, Clerk